



Republic of the Philippines
DEPARTMENT OF FINANCE

Roxas Boulevard Corner Pablo Ocampo, Sr. Street
Manila 1004

DOF OPINION NO. 007.2021

ATTY. HAROLD S. OCAMPO
Counsel for Petitioner/Appellant
Isla Lipana & Co.
29th Floor, Philamlife Tower,
8767 Paseo de Roxas, 1226
Makati City, Philippines

**SUBJECT: Request for Review of Bureau of Internal Revenue Ruling
No. ITAD 014-21**

Dear **Atty. Ocampo**:

This refers to the subject letter dated 17 June 2021 ("Request for Review") which you filed with this Department on behalf of Samsung SDS Asia Pacific Pte. Ltd. ("Samsung SG"), to request the review of Bureau of Internal Revenue ("BIR") Ruling No. ITAD 014-21 dated 19 May 2021, which ruled that donor's tax is due on the transfer of Samsung SDS SG's shares of stock in Samsung SDS Global ASL SCL Philippines Co., Ltd. Inc. ("Samsung PH") to Samsung SDS Co. Ltd. ("Samsung KR").

Samsung SG is a foreign corporation organized and existing under the laws of Singapore. It was established to carry on the business of sale, marketing, supporting, research, distributing, developing, manufacturing of software programs and systems, and to act as software specialists, data processing experts, consultants and advisors, providing support, technical, maintenance, servicing, implementation, reengineering of applications, systems and communication software in various industry sectors and other ancillary services in all types of computer software programs, among others. It is not registered as a corporation or as a partnership in the Philippines.

On the other hand, Samsung KR is a foreign corporation organized and existing under the laws of Korea while Samsung PH is a domestic corporation registered with the Securities and Exchange Commission and engaged in the business of warehousing, storing, logistics and forwarding of goods, wares, merchandise, and other commercial commodity, or things of value by operating as an

international air and ocean freight forwarding provider. Samsung PH is a wholly-owned subsidiary of Samsung SG, and their ultimate parent company is Samsung KR.

Samsung SG owns Twenty Million Nine Hundred Ninety-Nine Thousand Nine Hundred Ninety-Five (20,999,995) shares of stock in its affiliate Samsung PH.

On 11 May 2016, Samsung SG and Samsung KR entered into a Deed of Assignment of Shares of Stock whereby the former sold to the latter its 20,999,995 shares in Samsung PH (the "Subject Shares") for 606,785.95 Singaporean Dollars (Php20,811,665.87). Samsung SG acquired the Subject Shares for a total of Php20,999,995.00, which is equal to the aggregate par value thereof.

Commissioner of Internal Revenue ("CIR") Caesar R. Dulay issued BIR Ruling No. ITAD 014-21 which ruled that the capital gains, if any, from the transfer of the Subject Shares of Stock from Samsung SG to Samsung KR is exempt from income tax pursuant to Paragraph 3, Article 13 of the Philippines – Singapore Tax Treaty, it appearing that the assets of Samsung PH do not consist principally of immovable or real properties (i.e., less than 50% of its total assets).

However, the CIR ruled that the transfer of the Subject Shares from Samsung SG to Samsung KR is subject to donor's tax on the premise that the Fair Market Value ("FMV") of the Subject Shares is higher than the consideration provided. Under Section 100 of the Tax Code, as amended, where property other than real property is transferred for less than an adequate and full consideration in money or money's worth, then the amount by which the FMV of the property exceeded the value of the consideration shall be deemed a gift subject to donor's tax. The pertinent portion of BIR Ruling No. ITAD 014-21 reads:

"Based on Samsung PH's AFS for the year 2015, the FMV of the subject shares is Php68,650,311.65, as computed below:

Total equity	Php 68,650,328.00
<i>Divide by:</i> total number of shares	21,000,000
Fair market value per share	3.2691
<i>Multiply:</i> total number of shares sold	20,999,995
FMV of the shares sold	<u>Php 68,650,311.65</u>



Under Section 10(B) of Revenue Regulations No. 2-2003, donation made between organizations is considered a donation made to a stranger and is, therefore, subject to donor's tax of 30%."

xxx

"Accordingly, the excess of the FMV of the subject shares over the consideration is deemed a gift subject to donor's tax as follows:

FMV of the shares sold	Php 68,650,311.65
Less: consideration	<u>20,811,665.87</u>
Deemed gift	Php 47,838,645.78
Multiply by: Donor's tax rate	<u>30%</u>
Donor's tax payable	<u>Php 14,351,593.73"</u>

The BIR also ruled that documentary stamp tax of PhP0.75 on each PhP200.00, or fractional part thereof, of the par value of the shares under Section 175 of the Tax Code, as amended, in due on the sale of the Subject Shares.

In its Request for Review dated 17 June 2021, Samsung SG argued that it should not be liable for donor's tax since the Deed of Assignment of Shares of Stock was initiated as a result of a worldwide corporate reorganization. The worldwide corporate reorganization plan, which include the subject transfer of shares in Samsung PH, involved a total of 22 foreign entities in multiple countries under Samsung KR's control. Samsung SG emphasized that the transfer of shares in Samsung PH cannot be separate from the larger global reorganization plan.

We agree with Samsung SG.

The transfer of the Subject Shares of Stock from Samsung SG to Samsung KR pursuant to their international restructuring plan lacks the essential requisites for a valid donation.

After reviewing the facts and the laws presented, we agree with Samsung SG that the transfer of the Subject Shares from Samsung SG to Samsung KR pursuant to their international restructuring plan is not subject to donor's tax since it lacks the essential requisites for a valid donation.



In order that a donation be valid, the following elements must be present: (a) **the essential reduction of the patrimony of the donor**; (b) **the increase in the patrimony of the donee**; (c) **the intent to do an act of liberality or *animus donandi***;¹ (d) the donation must be contained in a public document; and e) that the acceptance thereof be made in the same deed or in a separate public instrument; if acceptance is made in a separate instrument, the donor must be notified thereof in an authentic form, to be noted in both instruments.²

In the case at bar, the first and second requisites are not present because the purchase of Samsung PH shares by Samsung KR did not result in a change of ownership structure. In the minutes of the meeting dated 9 May 2016, it was noted that Samsung KR is the sole shareholder of Samsung SG. It was decided through the said meeting that Samsung KR will purchase shares owned by Samsung SG which includes the Subject Shares. Further, in one similar case, no donor's tax was imposed on the transfer of shares from a subsidiary to its sole shareholder/parent considering that the same was made primarily for business purposes and that the transfer was made within one group of companies.³ Thus, there was no reduction of the patrimony of the donor since Samsung KR's wholly-owned subsidiary company (Samsung SG) merely transferred its ownership interest in its affiliate (Samsung PH) to its parent company (Samsung KR) as part of a worldwide corporate reorganization plan.

The case of *Philam Life v. Secretary of Finance is not applicable in this case.*

In *Philam Life v. Secretary of Finance*⁴, the Philippine American Life and General Insurance Company (Philam) sold its class A shares in Philam Care Health Systems, Inc. (Philam Care), through competitive bidding, to STI Investments. The BIR Commissioner issued a ruling that the transfer of shares of stock of Philam Care is subject to donor's tax. This ruling was affirmed by the Secretary of Finance. In affirming the decisions of the BIR Commission and Secretary of Finance, the Court ruled that there is price difference between the selling price and book value of the Philam Care shares of stock sold by Philam Life. Further,

¹ Emphasis supplied.

² *Missionary Sisters of Our Lady of Fatima v. Alzona*, G.R. No. 224307, 6 August 2018; Letters (d) and (e) particularly apply to donation of immovable property.

³ BIR Ruling [DA-(C-066) 228-09] dated 15 May 2009.

⁴ G.R. No. 210987, 24 November 2014.

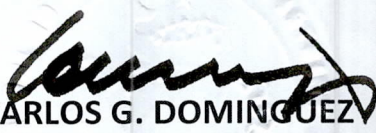
in this case, the sale of the shares of stock is between unrelated parties. The absence of donative intent does not exempt the sale of stocks from donor's tax.

Here, the exchange of shares between Samsung SG and Samsung KR resulted in Samsung KR's acquisition of 99.99% ownership in Samsung PH. However, there was no transfer of actual ownership interest by Samsung SG since Samsung KR's ownership over Samsung PH was merely changed from an indirect one to a direct one. It bears emphasis that under Section 100 of the Tax Code, as amended, insufficiency of consideration in the transaction triggers the applicability of the donor's tax. However, transfer of insufficient consideration presupposes a transfer of actual ownership interest to another party which is not applicable in this case.⁶

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be disclosed that the facts are different, then this ruling shall be considered as null and void.

Thank you.

Sincerely yours,


CARLOS G. DOMINGUEZ
Secretary of Finance
DEC 09 2021



CC **Commissioner Caesar R. Dulay**
Bureau of Internal Revenue

⁶ DOF Opinion No. 001-2019.